



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Adopt resolution authorizing the City Manager to execute an agreement with Lodi Gas Storage, LLC that will provide for natural gas storage for the City of Lodi (EUD)

MEETING DATE: August 21, 2002

PREPARED BY: Electric Utility Director

RECOMMENDED ACTION: That the City Council adopt a resolution authorizing the City Manager to execute the appropriate agreements with Lodi Gas Storage, LLC that will provide for natural gas storage for the City of Lodi.

BACKGROUND INFORMATION: The price of electricity and the price of natural gas are intimately linked. The crisis in the electric markets was amplified in the fall of 2000 when natural gas prices rose to historic levels. As more natural gas fired electric generation is brought on line, greater demands are placed on the interstate and intrastate gas delivery infrastructure. In the natural gas industry, underground natural gas storage provides regionally available reserves to handle peak gas requirements in a manner similar to electrical peak generators.

Lodi Gas Storage, LLC (LGS) has recently completed its natural gas storage facilities near Lodi. It is expected that their facilities will provide a significant benefit to our region in terms of natural gas supply reliability and price stability. The City of Lodi Electric Utility purchases a significant amount of natural gas to produce electricity and has developed a very positive working relationship with LGS over the past several years. In recognition of this relationship and given LGS's long term commitment to the community, LGS has offered the City an amount of natural gas storage capacity at no cost to the City.

The attached contracts detail the term and conditions of LGS's offer to the City in a manner consistent with their tariff approved by the California Public Utilities Commission. The relevant terms and conditions are shown in Appendix FSS. The contracts have been reviewed by the City Attorney and are presented herewith in substantially final form.

The Electric Utility Department respectfully requests that the City Council authorize the City Manager to execute the appropriate final contract documents between the City and LGS.

FUNDING: Not applicable.


Alan N. Vallow
Electric Utility Director

ANV/1st

C: City Attorney
Finance Director

APPROVED:


H. Dixon Flynn - City Manager

APPENDIX FSS

FIRM STORAGE SERVICE

LODI GAS STORAGE, L.L.C. ("LGS") and CITY OF LODI ("Customer") hereby adopt Service Schedule FSS, along with the previously executed Storage Service Agreement and General Terms and Conditions and agree to the additional provisions contained in this Appendix FSS:

Firm MSQ	120,000 Dekatherms
Firm CDIQ	4,000 Dekatherms
Firm CHIQ	166 Dekatherms
Firm CDWQ	4,000 Dekatherms
Firm CHWQ	166 Dekatherms

Agreement Start Date	March 1, 2002
Agreement End Date	February 28, 2011

Point of Receipt	LGS/PG&E CGT Sherman Island, CA
Point of Delivery	LGS/PG&E CGT Sherman Island, CA


Inventory Demand Rate	\$0.0000 per Dekatherm
Injection Demand Rate	\$0.0000 per Dekatherm per Month
Withdrawal Demand Rate	\$0.0000 per Dekatherm per Month
Injection Commodity Rate	\$0.0000 per Dekatherm
Withdrawal Commodity Rate	\$0.0000 per Dekatherm
Inventory Transfer Fee	\$0.0000 per Dekatherm Transferred
Fuel Charge	0.000 % Retention per Dekatherm Injected

The parties agree that by affixing their signatures hereto that this Appendix FSS is final and binding in accordance with Article 2 of Service Schedule FSS.

This Appendix FSS shall at all times be subject to changes or modifications by the California Public Utilities Commission as said Commission may direct, from time to time, in the exercise of its jurisdiction.

[SIGNATURE PAGE FOLLOWS]

LODI GAS STORAGE, L.L.C.

By: 

Name: Kevin O'Toole

Title: Vice President

Date: 16 May, 2002

CITY OF LODI


By: _____

Name: H. Dixon Flynn

Title: City Manager

Date: _____

APPROVED AS TO FORM:


Randall A. Hays, City Attorney

ATTEST:

Susan Blackston, City Clerk

THIS STORAGE SERVICES AGREEMENT MADE AS OF MAY 15, 2002, BETWEEN:

CITY OF LODI
("CUSTOMER")

- and -

LODI GAS STORAGE, L.L.C.
("LGS")

Recitals:

- A. LGS has developed certain facilities known as the LGS Storage Facility which permit LGS to provide Storage Services to Customer;
- B. Customer wishes to use some or all of those Services; and
- C. This Storage Services Agreement establishes how those Services will be provided.

LGS AND CUSTOMER AGREE AS FOLLOWS:

1. DEFINITIONS

- 1.1 Except as specified below, defined terms used in the Storage Service Documents, including this Agreement, have the meaning given to them in Rule 1 of the LGS Tariff.

"Acceptable Credit Rating" means a Credit Rating no lower than the following: "BBB-" from Standard & Poor's and "Baa3" from Moody's.

"Credit Rating" means the rating given to Customer's unsecured Long Term Debt by Standard & Poor's or Moody's.

"Financial Assurance" or "Financial Assurances" means the financial assurances provided for in Rule 6.

"Material Adverse Change" means the failure of Customer to maintain or reinstate the credit standards set forth in Rule 6 for 5 Business Days after written notice from LGS.

2. REPRESENTATIONS OF CUSTOMER

- 2.1 Customer represents and warrants to LGS as follows, and such representations and warranties shall survive for the benefit of LGS and are ratified and confirmed upon entering into each and every Transaction under the Storage Service Documents:
 - (a) Customer is duly formed and validly existing under the laws of its incorporating jurisdiction and is duly qualified to carry on business in all jurisdictions in which it carries on business;

- (b) the execution of this Agreement and the Storage Service Documents does not violate any law, regulation, or order or Customer's articles of incorporation or bylaws and does not breach any agreement to which Customer is a party; and
- (c) to the knowledge of Customer there are no actions, claims or proceedings threatened against or affecting Customer which might materially affect any of the Transactions contemplated in this Agreement or the Storage Service Documents, or which might affect Customer's ability to meet its financial obligations under the Storage Service Documents.

3. TERM

- 3.1 This Storage Services Agreement, made effective as of the date first above written, creates the contractual relationship between LGS and Customer for entering into Transactions utilizing the Services. From time to time there may be no Services provided, or no Transactions then in effect, in which case, this Storage Services Agreement will continue until either Party delivers a written termination notice to the other Party. That notice will be effective at the commencement of the second Gas Month following the date it was given; provided that, if a Transaction is then in effect between LGS and Customer, this Storage Services Agreement shall only terminate after that Transaction is performed or terminated in accordance with its provisions.

4. LGS STORAGE SERVICES

- 4.1 LGS will provide and Customer will utilize those Services that the Parties agree to from time to time, as confirmed by an Appendix evidencing the Transaction entered into by the Parties.
- 4.2 When a Transaction is agreed to by the Parties, the terms of the applicable Service Schedule will apply to that Transaction, except to the extent expressly modified by the express terms and conditions of the Appendix in question.
- 4.3 Each Party expressly consents to the recording of telephone conversations between the Parties concerning oral agreements for Transactions. Each Party hereby waives any objection based on the recording of such telephone conversations and to the admissibility of such a recording in a proceeding concerning the agreement before a court, arbitrator, mediator, or administrative agency.

5. TERMS OF LGS TARIFF

- 5.1 The terms and of LGS's Tariff on file with the California Public Utilities Commission apply to and are incorporated by reference into this Agreement and all Transactions which are entered into from time to time by Customer and LGS.
- 5.2 The Storage Service Documents and every Transaction entered into thereunder, shall at all times be subject to such changes or modifications by the Public Utilities Commission of the State of California as said Commission may, from time to time, direct in the exercise of its jurisdiction.
- 5.3 The Storage Service Documents will be governed by and interpreted in accordance with the laws in force in the State of California without regard to the choice of law provisions thereof; and the Parties irrevocably submit to the courts having jurisdiction in the State of California.

6. CONFLICT

- 6.1 Subject to section 4.2 hereof, if there is any conflict between the terms of this Storage Services Agreement and the terms of any of the E-Nom™ Customer Access Procedures, the General Terms and Conditions or

the terms of any Service Schedule then in effect between the Parties, the terms of this Storage Services Agreement shall prevail.

- 6.2 If there is any conflict between the terms of the E-Nom™ Customer Access Procedures and the terms of the General Terms and Conditions or the terms of any Service Schedule then in effect between the Parties, the terms of the E-Nom™ Customer Access Procedures shall prevail.
- 6.3 If there is any conflict between the terms of any Service Schedule then in effect between the Parties and the terms of the General Terms and Conditions, the terms of the Service Schedule shall prevail.

7. GAS QUALITY

- 7.1 Gas delivered to LGS at the Receipt Point(s) shall meet the gas quality specifications stated in the service agreement between the delivering pipeline company and PG&E. If no gas-quality specifications agreement exists between the delivering pipeline company and LGS for the Receipt Point(s), or if the natural gas is not delivered by a pipeline, the gas received by LGS shall meet the following quality specifications:
 - 1. Carbon dioxide: The gas shall contain no more than one percent by volume of carbon dioxide.
 - 2. Oxygen: The gas shall contain no more than 0.1 percent by volume of oxygen.
 - 3. Hydrogen sulfide: The gas shall contain no more than 0.25 grain of hydrogen sulfide per one hundred standard cubic feet.
 - 4. Mercaptan sulfur: The gas shall contain no more than 0.5 grain of mercaptan sulfur per one hundred standard cubic feet.
 - 5. Total sulfur: The gas shall contain no more than one grain of total sulfur per one hundred standard cubic feet.
 - 6. Water vapor: The gas shall contain no more than seven pounds of water vapor per million standard cubic feet.
 - 7. Hydrocarbon dewpoint: The gas shall not have a hydrocarbon dewpoint that will allow formation of liquids under the operating conditions of the receiving pipeline.
 - 8. Liquids: The gas shall contain no liquids at the Receipt Point(s).
 - 9. Objectionable matter: The gas shall not contain dust, sand, dirt, gums, oils, or other substances in an amount sufficient to be injurious to PG&E facilities or which shall cause the gas to be unmarketable.

8. DAMAGES

- 8.1 Notwithstanding any provision of this Storage Services Agreement or the Tariff to the contrary, neither party shall be liable to the other (including, without limitation, liability imposed pursuant to any arbitration) for indirect, consequential, special or punitive damages arising from any breach of any applicable Storage Service Document, whether based on tort, contract, or other civil or equitable action.

9. MISCELLANEOUS

- 9.1 In the event that LGS requires Customer to pay any material New Tax pursuant to Section 10.2 of the General Terms and Conditions of Service (under the Preliminary Statement in the Tariff), Customer may terminate this Storage Services Agreement by providing written notice of termination to LGS not later than ninety (90) days after LGS first gives notice to Customer that Customer shall have to pay such New Tax. Any such termination notice shall be delivered ninety (90) days prior to the effective date of the termination of this Storage Services Agreement. If the Customer issues such termination notice, then prior to the termination date the Parties shall attempt in good faith to reach a mutual agreement as to how to address such New Tax and avoid such termination. As used in this Section 7.1, "New Tax" means (i) a franchise fee or similar tax, charge or levy of the type referred to in Section 10.2 of the General Terms and Conditions of Service (under the Preliminary Statement in the Tariff) enacted and effective after the date of the relevant Appendix evidencing the Transaction entered into by the Parties or (ii) any law, rule, regulation or order, or interpretation thereof enacted and effective after the date of such Appendix resulting in the application of such franchise fee or similar tax, charge or levy to new or different class of Parties; provided, a New Tax specifically excludes capital stock, income, excess profits taxes, general franchise or gross receipt taxes imposed upon corporate other Parties on the basis of their income or on account of their existence or their right to do business within a particular state.
- 9.2 For the purpose of this Storage Services Agreement, the Parties hereby agree to the following variances from the current provisions of the LGS Tariff as specified below:
- (a) Section 6.1(c) of the General Terms and Conditions of Service shall read as follows:
- "6.1(c) A Customer or Guarantor Insolvency Event occurs."
- (b) The last sentence of Section 6.3(b) of the General Terms and Conditions of Service shall read:
- "6.3(b)Customer shall in no event be liable for damages greater than the value of the service that would have been provided by LGS from the date of termination to the end of the Term and any amounts due under Section 6.4(a)(iii)."
- (c) The last sentence of Section 8.1 of the General Terms and Conditions of Service shall read:
- "8.1. ...Notwithstanding the foregoing, if an event of Force Majeure prevents performance of a Party's obligations for a period exceeding 150 consecutive Days, the other Party shall have the right to terminate this Contract effective on 30 additional Days notice to the Party claiming the Force Majeure event."
- (d) Section 3.1 of Rule 6 shall read as follows:
- "3.1 If Customer does not have or does not maintain an Acceptable Credit Rating, Customer shall provide LGS with one or more of the Financial Assurances provided in Section 3.2, 3.3 and 3.4 hereof."
- (e) Subsections (a) and (d) of Section 3.2 of Rule 6 shall read as follows:
- "3.2 (a) An irrevocable Letter of Credit for the entirety of the obligations for which support is required.
- (d) Each Letter of Credit shall be in form and substance satisfactory to LGS, and without limiting the generality of the foregoing shall be issued by a financial

This Notification Schedule is attached to and forms part of the Storage Services Agreement entered in CITY OF LODI and LODI GAS STORAGE, L.L.C. as of May 15, 2002.

NOTICES TO LGS

NOTICES

LODI GAS STORAGE, LLC.
14811 ST. MARY'S LANE
SUITE 150
HOUSTON, TX 77079
ATTN: CONTRACT ADMINISTRATOR

TELEPHONE:
(281) 679-1221
FAX:
(281) 679-1564

NOTICES TO CUSTOMER

NOTICES

CITY OF LODI
1331 S. HAM LANE
LODI, CA 95242
ATTENTION: ALAN N. VALLOW
TELEPHONE: 209-333-6762
FAX: 209-333-6839

REQUESTS AND NOMINATIONS

LODI GAS STORAGE, LLC
14811 ST. MARY'S LANE
SUITE 150
HOUSTON, TX 77079
ATTN: MANAGER, HUB SERVICES

TELEPHONE:
(281) 679-1221
FAX:
(281) 679-1564

CONFIRMATIONS

CITY OF LODI
1331 S. HAM LANE
LODI, CA 95242
ATTENTION: ALAN N. VALLOW
TELEPHONE: 209-333-6762
FAX: 209-333-6839

PAYMENTS

UNION BANK OF CALIFORNIA
ABA# 122000496
ACCT.# 2200415437
REF: LODI GAS STORAGE
L.L.C. RECEIPTS

TELEPHONE:
(281) 679-9410

PAYMENTS

BANK
ACCOUNT NUMBER
GST NUMBER

REQUEST TIMES, NOMINATION TIMES & EFFECTIVE TIMES

All times are Pacific Clock Time

REQUEST TIME (FOR FSS SERVICE)	REQUEST TIME (FOR ISS SERVICE)	NOMINATION TIME	EFFECTIVE TIME
09:00	09:00	09:30	07:00 (next day)
15:30	15:30	16:00	07:00 (next day)
06:00 (flow day)	06:30 (flow day)	08:00 (same day)	15:00 (same day)
12:00 (flow day)	14:30 (flow day)	15:00 (same day)	19:00 (same day)

CONSENT AND AGREEMENT

CONSENT AND AGREEMENT (this "Consent"), dated as of May 15, 2002, among (i) CITY OF LODI, a California corporation (the "Counterparty"), (ii) LODI GAS STORAGE, L.L.C., a Delaware limited liability company (the "Company"), (iii) prior to any refinancing of the Project Loans (as described below) with the Term Loans (as described below), WHP ACQUISITION COMPANY, LLC, a Delaware limited liability company, as lender under the Amended and Restated Loan Agreement described below (together with any successors or assigns thereof (including Union Bank of California, N.A., in its capacity as Loan Agent (the "Bridge Loan Agent") for the financial institutions party to that certain Bridge Loan Agreement dated as of August 22, 2001 (the "Bridge Loan Agreement")), the "Project Loan Lender") and (iv) upon and following any term loan refinancing of the Project Loans (as described below) with the Term Loans (as described below), UNION BANK OF CALIFORNIA, N.A., in its capacity as administrative agent and as security agent (the "Term Loan Agent") for the financial institutions party to the Term Loan Agreement (as described below).

RECITALS:

WHEREAS, the Company and the Counterparty are party to the Storage Services Agreement, dated as of May 15, 2002 (as amended, supplemented or otherwise modified from time to time, the "Agreement");

WHEREAS, pursuant to the Agreement, the Counterparty has agreed to subscribe to [firm] gas storage services from Company gas storage facility to be located near Lodi, California and to be operated by the Company (the "Facility");

WHEREAS, the Company has entered into a First Amended and Restated Loan Agreement dated as of August 22, 2001 with the Project Loan Lender (as may be amended, supplemented or otherwise modified from time to time, the "Project Loan Agreement") and pursuant to the Project Loan Agreement, among other things, the Project Loan Lender, subject to the terms and conditions contained in the Project Loan Agreement, has made loans to the Company for the purpose of providing construction financing for the Facility (such loans and all other extensions of credit made pursuant to the Project Loan Agreement being referred to herein as the "Project Loans");

WHEREAS, as collateral security for the prompt and complete payment and performance when due of the Project Loans and the other obligations of the Company to the Project Loan Lender with respect to the Project Loan Agreement, the Company has pledged, assigned and transferred to the Project Loan Lender and granted to the Project Loan Lender, a first lien and continuing first priority security interest in all of its right, title and interest in, to and under the Agreement, pursuant to the Security Agreement,

dated as of August 22, 2001 (as the same may be amended, supplemented or otherwise modified from time to time, the "Security Agreement");

WHEREAS, it is a condition precedent to the obligations of the Project Loan Lender to make the Project Loans that the Counterparty and the Company execute and deliver this Consent; and

WHEREAS, the Company intends to enter into a term loan financing agreement with certain financial institutions (the "Term Loan Lenders") and the Term Loan Agent (as may be amended, supplemented or otherwise modified from time to time, the "Term Loan Agreement") in order to refinance the Project Loans with an approximately \$175,000,000 term loan financing for the Facility (such loans and all other extensions of credit made pursuant to the Term Loan Agreement being referred to herein as the "Term Loans") and as collateral security for the prompt and complete payment and performance when due of the Term Loans and the other obligations of the Company to the Term Loan Lenders with respect to the Term Loan Agreement, the Company will pledge, assign and transfer to the Term Loan Agent for the ratable benefit of the Term Loan Lenders and grant to the Term Loan Agent for the ratable benefit of the Term Loan Lenders, a first lien and continuing first priority security interest in all of its right, title and interest in, to and under the Agreement, pursuant to a security agreement.

NOW THEREFORE, in consideration of good and valuable consideration, the receipt of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows, anything in the Agreement to the contrary notwithstanding:

1. Consents. The Counterparty hereby acknowledges notice of and consents to:

1.1 the pledge and assignment by the Company to the Project Loan Lender, as collateral security pursuant to the Security Agreement, of all right, title and interest of the respective assignors in, to and under (but not the obligations, liabilities or duties of the Company with respect to) the Agreement.

1.2 that following the foreclosure by the Bridge Loan Agent under the Bridge Loan Agreement, the Bridge Loan Agent (for the ratable benefit of the lenders parties to the Bridge Loan Agreement) will be entitled but not obligated to exercise all of the Project Loan Lender's rights granted under this Consent.

2. Agreements. The Counterparty hereby agrees as follows:

2.1 Unless and until the Counterparty receives written notice to the contrary from the Project Loan Lender, the Counterparty will make all payments to be made by it to the Company under or by reason of the Agreement directly into the

account specified below or directly to such other institution or in such other manner as may be specified to the Counterparty from time to time in writing by the Project Loan Lender:

Lodi Gas Storage, L.L.C.
ABA #122000496
Acct. #2200415437
Ref: Lodi Gas Storage, LLC Receipts

The Counterparty will make all payments to be made by it to the Company under or by reason of the Agreement without any offset, abatement, withholding or reduction except as expressly permitted by the Agreement.

2.2 Upon the occurrence and during a continuance of an event of default under the Project Loan Agreement, the Project Loan Lender shall be entitled to exercise any and all rights of the Company under the Agreement in accordance with the terms of this Consent and the Agreement, and the Counterparty will comply in all respects with such exercise by the Project Loan Lender. For purposes of the foregoing, the Counterparty shall be entitled to assume that any such purported exercise is in accordance with the Project Loan Agreement.

2.3 The Counterparty will not, without the prior written consent of the Project Loan Lender sell, assign or otherwise dispose of any part of its interests in the Agreement except as expressly permitted by the Agreement. Counterparty hereby acknowledges that Company may not amend, supplement or otherwise modify the Agreement without the prior written consent of the Project Loan Lender. The Counterparty will deliver to the Project Loan Lender, concurrently with the delivery thereof to the Company, duplicates or copies of notices of default and notices of Force Majeure given by the Counterparty under or pursuant to the Agreement.

2.4 The Counterparty will not terminate the Agreement, or suspend its performance or any of its obligations thereunder, on account of any failure, default or breach of the Company thereunder, or any other event or condition, without first (i) giving written notice of its intention to do so to the Project Loan Lender, and (ii) providing to each such Person to which such notice is required to be given a reasonable opportunity, but not fewer than 30 days after such notice, to effect a cure of the default, breach, failure, event or condition (or if the nature of the default, breach, failure, event or condition is such that the same cannot be cured within such 30 days, such additional period as shall be necessary to effect such cure so long as such cure shall have been commenced within such 30-day

period and any such Person or any of their respective designees or assignees shall be diligently pursuing such cure).

2.5 During the term of the Agreement and after receipt by the Company or the Project Loan Lender of any Notice of Default, the Project Loan Lender shall have the right, but not the obligation, to pay all sums due under the Agreement and to perform any other obligation required of the Company thereunder or necessary and proper to prevent its termination or the suspension of the Counterparty's performance or any of its obligations thereunder, at any time. In the event that the Project Loan Lender (or any of its respective designees or assignees) so elects to perform any such obligations, it shall not have any personal liability to the Counterparty for the performance of the Company's obligations under the Agreement, it being understood that the sole recourse of the Counterparty seeking the enforcement of such obligations shall be limited to the Company and its assets and, if applicable, the Project Loan Lender's interest in the Facility.

2.6 In the event that the Project Loan Lender or any of its designees or assignees succeeds to the Company's interest under the Agreement, whether by foreclosure or otherwise, except as otherwise provided in this Section 2.6, the Project Loan Lender or such designee or assignee shall be liable under the Agreement only for any unperformed payment obligations existing as of the date the Project Loan Lender succeeded to the Company's interest under the Agreement and for the performance of obligations of the Company to be performed while the Project Loan Lender or such designee or assignee is performing under and seeking the benefit of the Agreement and then only to the extent of the Project Loan Lender's or such designee's or assignee's interest in the Facility and all revenues and proceeds derived therefrom. The Project Loan Lender or its designee or assignee shall have the right to assign any interest it may acquire in the Agreement to any person or entity who assumes in writing the obligations of the Company under the Agreement, and the Counterparty hereby agrees to be bound by any such assignment and assumption; provided that any person to whom the Agreement is assigned other than as collateral security for a loan shall have reasonably sufficient capitalization and natural gas operating experience substantially similar to that of the Company. Upon any such assignment and assumption, the Project Loan Lender or such designee or assignee shall be relieved of all obligations arising under the Agreement thereafter to the extent of such assignment.

2.7 If the Project Loan Lender or any of its respective designees or assignees is prohibited by operation of law or by any order or injunction issued by any court or by reason of any action in connection with a bankruptcy or insolvency proceeding from curing any failure, breach or default under the Agreement, or any

other event or condition, or from commencing or prosecuting foreclosure or other appropriate proceedings, the time periods specified in Section 2.4 above for curing such failure, breach or default or commencing or prosecuting such foreclosure or other proceedings shall be extended by the period of such prohibition.

2.8 In the event that the Agreement is rejected or terminated by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding and within 180 days after such rejection or termination, if the Project Loan Lender or any of its designees or assignees shall so request, the Counterparty will execute and deliver to the Project Loan Lender or such designee or assignee a new contract, which new contract shall be for the balance of the obligations and services remaining to be performed under the Agreement before giving effect to such rejection or termination and shall contain the same conditions, agreements, terms, provisions and limitations as the Agreement; provided, however, that if the approval of any such trustee or debtor-in-possession or any regulatory approvals are necessary in order for the Counterparty to enter into or perform under any such new contract, the Counterparty agrees to cooperate with the Project Loan Lender or such designee or assignee in obtaining such approvals as rapidly as possible. The Project Loan Lender or any such designee or assignee shall be liable for or be required to perform or cause to be performed any of the Company's payment obligations that were unperformed at the time of such rejection or termination.. The Project Loan Lender or such designee or assignee shall be liable under any such new contract only for the performance of obligations of the Company to be performed while the Project Loan Lender or such designee or assignee is performing under and seeking the benefit of such new contract and then only to the extent of the Project Loan Lender's or such designee's or assignee's interest in the Facility and all revenues and proceeds derived therefrom. The Project Loan Lender or any such designee or assignee shall have the right to assign any interest it may acquire in such new contract to any person or entity who assumes in writing the obligations under such new contract which correspond to those of the Company under the Agreement; provided that any person to whom the Agreement is assigned other than as collateral security for a loan shall have reasonably sufficient capitalization and natural gas operating experience substantially similar to that of the Company. The Counterparty hereby agrees to be bound by any such assignment and assumption. Upon any such assignment and assumption, the Project Loan Lender or such designee or assignee shall be relieved of all obligations arising under such new contract thereafter to the extent of such assignment.

2.10 The Counterparty hereby acknowledges that the Company may, from time to time during the term of the Agreement, refinance the indebtedness incurred

under the Project Loan Agreement, pursuant to another bank financing, an institutional financing, a capital markets financing, a lease financing or any other combination thereof or other form of financing, including that the Company may refinance the Project Loans with the Term Loans pursuant to the Term Loan Agreement. In connection with any such refinancing, the Counterparty hereby consents to any collateral assignment or other assignment of the Agreement in connection therewith and agrees that the terms and provisions of this Consent shall apply with respect to such assignment and shall inure to the benefit of the parties providing such refinancing. In furtherance of the foregoing, the Counterparty agrees that (i)(a) in connection with the Term Loans, references in this Consent to the terms "Project Loans", "Project Loan Lender", "Project Loan Agreement" and "Security Agreement" shall be deemed references to the "Term Loans", "Term Loan Lenders" or "Term Loan Agent" as the context may require, "Term Loan Agreement" and "Term Loan Security Agreement", respectively and (b) in connection with any other refinancings (including refinancings of the Term Loan), references in this Consent to the terms "Project Loans", "Project Loan Lender", "Project Loan Agreement" and "Security Agreement" shall be deemed references to the corresponding terms and parties used in connection with such refinancing, (ii) all references in this Consent to the Bridge Loan Agreement shall be deemed void and of no effect, (iii) references in this Consent to "event of default" shall have the meaning assigned to such term in connection with such refinancing, and (iv) if requested by the Company, it shall enter into a new consent, substantially in the form of this Consent, in favor of the parties providing such refinancing. The Company and the Project Loan Lender hereby acknowledge and agree to provide the Counterparty five days notice of the date of any anticipated refinancing and evidence of the termination of the Project Loan Lender's security interest in the Agreement.

3. Representations and Warranties. The Counterparty hereby represents, warrants and agrees that:

3.1 The Counterparty is a corporation duly organized and validly existing and in good standing under the laws of California, and is in good standing and licensed to do business in all states and countries in which it is required to do business in order to fulfill its obligations under this Consent and the Agreement, and has all requisite power and authority to conduct its business, to own its properties, and to execute and deliver, and to perform its obligations under, this Consent and the Agreement.

3.2 The execution, delivery and performance by the Counterparty of this Consent and the Agreement have been duly authorized by all necessary corporate action and do not and will not (i) require any consent or approval of the [board of

directors] of the Counterparty which has not been obtained, (ii) violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to the Counterparty, or (iii) result in a breach of or constitute a default under, or require a consent that has not been obtained under or result in the creation of a lien under, its certificate of incorporation or by-laws or any indenture or loan or credit agreement or any other agreement, lease or instrument to which the Counterparty is a party or by which it or its properties may be bound or affected.

3.3 Each of this Consent and the Agreement constitutes the legal, valid and binding obligation of the Counterparty enforceable against it in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally.

3.4 No authorization, approval, consent, permit or other action by, or registration or filing with, any government authority or any other entity is necessary for or in connection with the execution or delivery by the Counterparty of, or the performance by the Counterparty of any of its obligations under, the Agreement or this Consent, other than those that have been duly obtained or made, were validly issued and are final and in full force and effect as of the date hereof and that are not the subject of any pending or (to the best knowledge of the Counterparty after due inquiry) threatened judicial or administrative proceeding and with respect to which if the applicable statute, rule or regulation provides for a fixed period for judicial or administrative appeal or review thereof, such period has expired.

3.5 No litigation, action, suit, adverse proceeding or investigation before or by any arbitrator or government authority is pending or (to the best knowledge of the Counterparty after due inquiry) threatened against the Counterparty or against any of its properties or revenues (i) with respect to the Agreement, this Consent or any of the transactions contemplated hereby or thereby or (ii) which, individually or in the aggregate, could reasonably be expected to have a material adverse effect on the ability of the Counterparty to perform its obligations under the Agreement or this Consent.

3.6 There has been no default, breach or failure to perform (or event or condition which, with the giving of notice, the passage of time or both, would constitute a default, breach or failure to perform) in respect of the performance of obligations to or by the Counterparty under the Agreement.

4. Successors and Assigns; Additional Parties. This Consent shall be binding upon the successors and assigns of the Counterparty and shall inure, together with the rights and remedies of the Company and the Project Loan Lender, to the benefit of the Project Loan Lender and its successors, designees, transferees and assigns. Prior to any refinancing, the Bridge Loan Lender shall be, and following any refinancing the parties providing such refinancing (including the Term Loan Agent) shall become, and each shall be deemed thereafter to be (without the need for any further action) a party to this Consent.

5. Amendments; Waivers. No termination, amendment or waiver of any provision of this Consent or consent to any departure by the Counterparty from any provisions of this Consent shall in any event be effective unless the same shall be in writing and signed by the Counterparty, the Company and the Project Loan Lender, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

6. GOVERNING LAW. THIS CONSENT SHALL BE GOVERNED BY, AND BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

7. Other Agreements. As among the Company and the Project Loan Lender, this Consent shall not be construed as amending, supplementing or otherwise modifying any of the terms, conditions or other provisions of the Project Loan Agreement or any other agreement between or among the Company and the Project Loan Lender, and in the event of any conflict between the terms of this Consent and any such agreement, as among the Company and the Project Loan Lender, the terms of such agreement shall prevail.

8. Severability. Any provision of this Consent that may be determined by a government authority to be illegal, invalid, prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such illegality, invalidity, prohibition or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by all applicable requirements of law, the Counterparty hereby waives any provision of law that renders any provision hereof illegal, invalid, prohibited or unenforceable in any respect.

9. Notices. All notices, requests and demands to or upon the respective parties named below to be effective shall be in writing (including by telecopy), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered by hand or, in the case of notice given by mail, private courier, overnight

delivery service or telecopy, when received, addressed as follows or to such other address as may be hereafter notified by such respective parties:

The Counterparty: City of Lodi
1331 S. Ham Lane
Lodi, CA 95242
Attn: Alan N. Vallow
Telephone: 209-333-6762
Telecopier: 209-333-6839

The Company: Lodi Gas Storage, LLC
14811 St. Mary's Lane, Suite 150
Houston, TX 7707
Attn: Chief Financial Officer
Telephone: 281-679-3594
Telecopier: 281-679-1564

with a copy to: c/o [_____]

Project Loan Lender WHP Acquisition Company
c/o Aquila
1100 Walnut, Suite 3300
Kansas City, MO 64106
Attn: General Counsel
Telephone: 816-527-1170
Telecopier: 816-527-4170

Security Deposit Agent: Union Bank of California, N.A.
Energy Capital Services
445 South Figueroa Street,
Los Angeles, California 90071
Attn: Sue Johnson
Telephone: 213-236-4222
Telecopier: 213-236-4096

10. Headings. The headings of the various sections of this Consent are for convenience of reference only, do not constitute a part hereof and shall not affect the meaning of any provision hereof.

11. Counterparts. This Consent may be executed in any number of counterparts (including by electronic facsimile transmission thereof), all of which together shall constitute a single instrument, and it shall not be necessary that any counterpart be signed by all the parties hereto.

IN WITNESS WHEREOF, the parties have duly executed and delivered this Consent, or have caused this Consent to be duly executed and delivered by their Authorized Officers, as of the date first above written.

City of Lodi,
as the Counterparty

APPROVED AS TO FORM:

By: _____

Randall A. Hays, City Attorney

Name: H. Dixon Flynn
Title: City Manager

ATTEST:

LODI GAS STORAGE, L.L.C.,
as the Company

Susan Blackston, City Clerk

By: _____

Name: KEVIN O'TOOLE
Title: VICE PRESIDENT

Accepted and Agreed:

UNION BANK OF CALIFORNIA, N.A.,
as Security Deposit Agent

By: _____

Name:
Title:

WHP ACQUISITION COMPANY, LLC,
as Project Loan Lender

By: _____

Name:
Title:

CONSENT AND AGREEMENT

CONSENT AND AGREEMENT (this "Consent"), dated as of May 15, 2002, among (i) CITY OF LODI, a California utility (the "Guarantor"), (ii) LODI GAS STORAGE, L.L.C., a Delaware limited liability company (the "Company"), (iii) prior to any refinancing of the Project Loans (as described below) with the Term Loans (as described below), WHP ACQUISITION COMPANY, LLC, a Delaware limited liability company, as lender under the Amended and Restated Loan Agreement described below (together with any successors or assigns thereof (including Union Bank of California, N.A., in its capacity as Loan Agent (the "Bridge Loan Agent") for the financial institutions party to that certain Bridge Loan Agreement dated as of August 22, 2001 (the "Bridge Loan Agreement")), the "Project Loan Lender") and (iv) upon and following any term loan refinancing of the Project Loans (as described below) with the Term Loans (as described below), UNION BANK OF CALIFORNIA, N.A., in its capacity as administrative agent and as security agent (the "Term Loan Agent") for the financial institutions party to the Term Loan Agreement (as described below).

RECITALS:

WHEREAS, the Company and City of Lodi, a California utility, together with its permitted successors and assigns, (the "Counterparty") are party to the Storage Services Agreement, dated as of May 15, 2002 (as amended, supplemented or otherwise modified from time to time, the "Agreement");

WHEREAS, pursuant to the Agreement, the Counterparty has agreed to subscribe to [firm] gas storage services from Company at a gas storage facility to be located near Lodi, California and to be operated by the Company (the "Facility");

WHEREAS, the Guarantor directly or indirectly owns one hundred percent (100%) of the Counterparty, and as an inducement to the Company to enter into the Agreement, the Guarantor has executed a guaranty, dated as of _____, __, 2002, of the Counterparty's obligations and liabilities under the Agreement in favor of the Company (as amended, supplemented or otherwise modified from time to time, the "Guaranty");

WHEREAS, the Company has entered into a First Amended and Restated Loan Agreement dated as of August 22, 2001 with the Project Loan Lender (as may be amended, supplemented or otherwise modified from time to time, the "Project Loan Agreement") and pursuant to the Project Loan Agreement, among other things, the Project Loan Lender, subject to the terms and conditions contained in the Project Loan Agreement, has made loans to the Company for the purpose of providing construction

financing for the Facility (such loans and all other extensions of credit made pursuant to the Project Loan Agreement being referred to herein as the "Project Loans");

WHEREAS, as collateral security for the prompt and complete payment and performance when due of the Project Loans and the other obligations of the Company to the Project Loan Lender with respect to the Project Loan Agreement, the Company has pledged, assigned and transferred to the Project Loan Lender and granted to the Project Loan Lender, a first lien and continuing first priority security interest in all of its right, title and interest in, to and under the Agreement and the Guaranty, pursuant to the Security Agreement, dated as of August 22, 2001 (as the same may be amended, supplemented or otherwise modified from time to time, the "Security Agreement");

WHEREAS, it is a condition precedent to the obligations of the Project Loan Lender to make the Project Loans that the Guarantor execute and deliver this Consent; and

WHEREAS, the Company intends to enter into a term loan financing agreement with certain financial institutions (the "Term Loan Lenders") and the Term Loan Agent (as may be amended, supplemented or otherwise modified from time to time, the "Term Loan Agreement") in order to refinance the Project Loans with an approximately \$175,000,000 term loan financing for the Facility (such loans and all other extensions of credit made pursuant to the Term Loan Agreement being referred to herein as the "Term Loans") and as collateral security for the prompt and complete payment and performance when due of the Term Loans and the other obligations of the Company to the Term Loan Lenders with respect to the Term Loan Agreement, the Company will pledge, assign and transfer to the Term Loan Agent for the ratable benefit of the Term Loan Lenders and grant to the Term Loan Agent for the ratable benefit of the Term Loan Lenders, a first lien and continuing first priority security interest in all of its right, title and interest in, to and under the Agreement and the Guaranty, pursuant to a security agreement (as may be amended, supplemented or otherwise modified from time to time, the "Term Loan Security Agreement").

NOW THEREFORE, in consideration of good and valuable consideration, the receipt of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows, anything in the Guaranty to the contrary notwithstanding:

1. Consents. The Guarantor hereby acknowledges notice of and consents to:

1.1 the pledge and assignment by the Company to the Project Loan Lender, as collateral security pursuant to the Security Agreement, of all right, title and interest of the respective assignors in, to and under the Guaranty.

1.2 that following the foreclosure by the Bridge Loan Agent under the Bridge Loan Agreement, the Bridge Loan Agent (for the ratable benefit of the lenders parties to the Bridge Loan Agreement) will be entitled but not obligated to exercise all of the Project Loan Lender's rights granted under this Consent.

2. Agreements. The Guarantor hereby agrees as follows:

2.1 Unless and until the Guarantor receives written notice to the contrary from the Project Loan Lender, the Guarantor will make all payments to be made by it to the Company under or by reason of the Guaranty directly into the account specified below or directly to such other institution or in such other manner as may be specified to the Guarantor from time to time in writing by the Project Loan Lender:

Lodi Gas Storage, L.L.C.
ABA #122000496
Acct. #2200415437
Ref: Lodi Gas Storage, L.L.C. Receipts

The Guarantor will make all payments to be made by it to the Company under or by reason of the Guaranty in accordance with the terms and conditions of the Guaranty.

2.2 Upon the occurrence and during a continuance of an event of default under the Project Loan Agreement, the Project Loan Lender shall be entitled to exercise any and all rights of the Company under the Guaranty in accordance with the terms of this Consent and the Guaranty, and the Guarantor will comply in all respects with such exercise by the Project Loan Lender. For purposes of the foregoing, the Guarantor shall be entitled to assume that any such purported exercise is in accordance with the Project Loan Agreement. The Company releases the Guarantor and the Counterparty from any liability and waives any rights it may have against the Guarantor or the Counterparty for their reliance on any notice received or any right exercised under this Consent or the Guaranty by the Project Loan Lender or their permitted assigns.

2.3 The Guarantor will not, without prior written consent of the Project Loan Lender sell, assign or otherwise dispose of any part of its interests in the Guaranty.

2.4 The Guarantor hereby acknowledges that the Company may, from time to time during the term of the Agreement, refinance the indebtedness incurred under the Project Loan Agreement, pursuant to another bank financing, an institutional financing, a capital markets financing, a lease financing or any other combination thereof or other form of financing, including that the Company may refinance the Project Loans with the Term Loans pursuant to the Term Loan Agreement. In connection with any such refinancing, the Guarantor hereby consents to any collateral assignment or other

assignment of the Guaranty in connection with the valid assignment of the Agreement under the terms contained therein and agrees that the terms and provisions of this Consent shall apply with respect to such assignment and shall inure to the benefit of the parties providing such refinancing. In furtherance of the foregoing, the Guarantor agrees that (i)(a) in connection with the Term Loans, references in this Consent to the terms "Project Loans", "Project Loan Lender", "Project Loan Agreement" and "Security Agreement" shall be deemed references to the "Term Loans", "Term Loan Lenders" or "Term Loan Agent" as the context may require, "Term Loan Agreement" and "Term Loan Security Agreement", respectively and (b) in connection with any other refinancings (including refinancings of the Term Loan), references in this Consent to the terms "Project Loans", "Project Loan Lender", "Project Loan Agreement" and "Security Agreement" shall be deemed references to the corresponding terms and parties used in connection with such refinancing, (ii) in connection with any such refinancings, all references in this Consent to the Bridge Loan Agreement shall be deemed void and of no effect, (iii) references in this Consent to "event of default" shall have the meaning assigned to such term in connection with such refinancing, and (iv) if requested by the Company, it shall enter into a new consent, in the same form as this Consent, in favor of the parties providing such refinancing. The Company and the Project Loan Lender hereby acknowledge and agree to provide the Guarantor five (5) business days notice of the date of any anticipated refinancing and evidence of the termination of the Project Loan Lender's security interest in the Guaranty.

3. Representations and Warranties. The Guarantor hereby represents, warrants and agrees that:

3.1 The Guarantor is a California corporation, duly organized and validly existing and in good standing under the laws of California and is in good standing and to the best of its knowledge in all material respects licensed to do business in all states and countries in which it is required to do business in order to fulfill its obligations under this Consent and the Guaranty, and has all requisite power and authority to conduct its business, to own its properties, and to execute and deliver, and to perform its obligations under, this Consent and the Guaranty.

3.2 The execution, delivery and performance by the Guarantor of this Consent and the Guaranty have been duly authorized by all necessary corporate action and do not and will not (i) require any consent or approval of the [board of directors] of the Guarantor which has not been obtained, (ii) violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to the Guarantor, or (iii) result in a breach of or constitute a default under, or require a consent that has not been obtained under or result in the creation of a lien under, its certificate of incorporation or by-laws or any indenture or

loan or credit agreement or any other agreement, lease or instrument to which the Guarantor is a party or by which it or its properties may be bound or affected.

3.3 Each of this Consent and the Guaranty constitutes the legal, valid and binding obligation of the Guarantor enforceable against it in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally.

3.4 No authorization, approval, consent, permit or other action by, or registration or filing with, any government authority or any other entity is necessary for or in connection with the execution or delivery by the Guarantor of, or the performance by the Guarantor of any of its obligations under, the Guaranty or this Consent, other than those that have been duly obtained or made, were validly issued and are final and in full force and effect as of the date hereof and that are not the subject of any pending or (to the best knowledge of the Guarantor after due inquiry) threatened judicial or administrative proceeding and with respect to which if the applicable statute, rule or regulation provides for a fixed period for judicial or administrative appeal or review thereof, such period has expired.

3.5 No litigation, action, suit, adverse proceeding or investigation before or by any arbitrator or government authority is pending or (to the best knowledge of the Guarantor after due inquiry) threatened against the Guarantor or against any of its properties or revenues (i) with respect to the Agreement, this Consent or any of the transactions contemplated hereby or thereby or (ii) which, individually or in the aggregate, could reasonably be expected to have a material adverse effect on the ability of the Guarantor to perform its obligations under the Guaranty or this Consent.

3.6 There has been no default, breach or failure to perform (or event or condition which, with the giving of notice, the passage of time or both, would constitute a default, breach or failure to perform) in respect of the performance of obligations to or by the Guarantor under the Guaranty.

4. Successors and Assigns; Additional Parties. This Consent shall be binding upon the successors and assigns of each of the parties to this Consent and shall inure, together with the rights and remedies of the Company and the Project Loan Lender, to the benefit of the Project Loan Lender and its successors, designees, transferees and assigns. Prior to any refinancing, the Bridge Loan Lender shall be, and following any refinancing the parties providing such refinancing (including the Term Loan Agent) shall become, and each shall be deemed thereafter to be (without the need for any further action) a party to this Consent.

5. Amendments; Waivers. No termination, amendment or waiver of any provision of this Consent or consent to any departure by any party hereto from any provisions of this Consent shall in any event be effective unless the same shall be in writing and signed by the Counterparty, the Company, all other parties to this Consent (as determined pursuant to Sections 2.4 and 4), and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

6. **GOVERNING LAW.** THIS CONSENT SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REFERENCE TO CHOICE OF LAW DOCTRINE. THE PARTIES IRREVOCABLY SUBMIT TO THE JURISDICTION OF THE STATE OF NEW YORK AND THE UNITED STATES DISTRICT COURT LOCATED IN THE SOUTHERN DISTRICT OF NEW YORK IN NEW YORK, NEW YORK FOR PURPOSES OF ANY SUIT, ACTION OR PROCEEDINGS RELATED TO THIS GUARANTY.

7. Other Agreements. As among the Company and the Project Loan Lender, this Consent shall not be construed as amending, supplementing or otherwise modifying any of the terms, conditions or other provisions of the Project Loan Agreement or any other agreement between or among the Company and the Project Loan Lender, and in the event of any conflict between the terms of this Consent and any such agreement, as among the Company and the Project Loan Lender, the terms of such agreement shall prevail.

8. Severability. Any provision of this Consent that may be determined by a government authority to be illegal, invalid, prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such illegality, invalidity, prohibition or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by all applicable requirements of law, the Guarantor hereby waives any provision of law that renders any provision hereof illegal, invalid, prohibited or unenforceable in any respect.

9. Notices. All notices, requests and demands to or upon the respective parties named below to be effective shall be in writing (including by telecopy), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered by hand or, in the case of notice given by mail, private courier, overnight delivery service or telecopy, when received, addressed as follows or to such other address as may be hereafter notified by such respective parties:

The Guarantor: City of Lodi
1331 S. Ham Lane
Lodi, CA 95242
Attn: Alan N. Vallow
Telephone: 209-333-6762
Telecopier: 209-333-6839

The Company: Lodi Gas Storage, L.L.C.
14811 St. Mary's Lane, Suite 150
Houston, TX 77079
Attn: Chief Financial Officer
Telephone: 281-679-3594
Telecopier: 281-679-1564

Project Loan Lender: WHP Acquisition Company
c/o Aquila, Inc.
1100 Walnut, Suite 3300
Kansas City, MO 64106
Attn: General Counsel
Telephone: 816-527-1170
Telecopier: 816-527-4170

Bridge Loan Agent &
Term Loan Agent: Union Bank of California, N.A.
Energy Capital Services
445 South Figueroa Street,
Los Angeles, California 90071
Attn: Sue Johnson
Telephone: 213-236-4222
Telecopier: 213-236-4096

9. Headings. The headings of the various sections of this Consent are for convenience of reference only, do not constitute a part hereof and shall not affect the meaning of any provision hereof.

10. Counterparts. This Consent may be executed in any number of counterparts (including by electronic facsimile transmission thereof), all of which together shall constitute a single instrument, and it shall not be necessary that any counterpart be signed by all the parties hereto.

[Signatures on Next Page]

IN WITNESS WHEREOF, the parties have duly executed and delivered this Consent, or have caused this Consent to be duly executed and delivered by their Authorized Officers, as of the date first above written.

CITY OF LODI
as the Guarantor

APPROVED AS TO FORM:

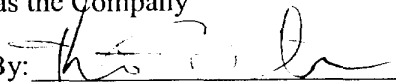
By: _____
Name: H. Dixon Flynn
Title: City Manager

Randall A. Hays, City Attorney

ATTEST:

LODI GAS STORAGE, L.L.C.,
as the Company

Susan Blackston, City Clerk

By: 
Name: KEVIN O'TOOLE
Title: VICE PRESIDENT

Accepted and Agreed:

UNION BANK OF CALIFORNIA, N.A.,
as the Bridge Loan Agent and the Term Loan Agent

By: _____
Name:
Title:

WHP ACQUISITION COMPANY, LLC,
as the Project Loan Lender

By: _____
Name:
Title:

FORM OF GUARANTY

GUARANTY dated as of May 15, 2002, by **CITY OF LODI**, a California utility (the "Guarantor"), in favor of **LODI GAS STORAGE, L.L.C.**, a Delaware limited liability company ("LGS").

1. **Guaranty.** To induce LGS to enter into the Storage Services Agreement dated as of May 15, 2002 (the "Agreement") with **CITY OF LODI** (the "Company") and any of the transactions contemplated thereunder, the Guarantor, absolutely, unconditionally and irrevocably guarantees to LGS and its successors, endorsees and assigns the prompt payment when due, subject to any applicable grace period, of all present and future payment obligations of Company to LGS arising out the Agreement (the "Obligations").

2. **Nature of Guaranty.** The Guarantor's obligations hereunder shall not be affected by the existence, validity, enforceability, perfection or extent of any collateral therefor or by any other circumstance relating to the Obligations that might otherwise constitute a legal or equitable discharge of or defense to the Guarantor not available to Company. This is a guaranty of payment and not collection. The Guarantor agrees that LGS may resort to the Guarantor for payment of any of the Obligations whether or not LGS shall have resorted to any collateral therefor or shall have proceeded against Company or any other obligor principally or secondarily obligated with respect to any of the Obligations. In the event that any payment to LGS in respect of any Obligations is rescinded or must otherwise be returned for any reason whatsoever, the Guarantor shall remain liable hereunder with respect to such Obligations as if such payment had not been made. The Guarantor reserves the right to assert defenses which Company may have to payment of any Obligations other than defenses expressly waived hereby. The Guarantor acknowledges that this Guaranty will remain in full force and effect with respect to the permitted assigns of the Company under the Agreement.

3. **Guaranty Unconditional and Absolute.** The obligations of the Guarantor hereunder shall be unconditional and absolute and, without limiting the generality of the foregoing, shall not be released, discharged or otherwise affected by:

(i) any extension, renewal, settlement, compromise, waiver, discharge or release in respect of any Obligations of the Company;

(ii) the existence, or extent of, any release, exchange, surrender, non-perfection or invalidity of any direct or indirect security for any of the Obligations;

(iii) any modification, amendment, waiver, extension of or supplement to the Agreement or the Obligations agreed to from time to time by the Company and LGS;

(iv) any change in the corporate existence (including its constitution, laws, rules, regulations or powers), structure or ownership of the Company or the Guarantor, or any insolvency, bankruptcy, reorganization or other similar proceeding affecting the Company or its assets, the Guarantor or any other guarantor of any of the Obligations;

(v) the existence of any claim, set-off or other rights which the Guarantor may have at any time against the Company, LGS or any other corporation or person, whether in connection herewith or in connection with any unrelated transaction; provided that nothing herein shall prevent the assertion of any such claim by separate suit or compulsory counterclaim;

(vi) the invalidity or unenforceability in whole or in part of the Agreement or any Obligations or any instrument evidencing any Obligations, or any provision of applicable law or regulation purporting to prohibit payment by the Company of amounts to be paid by it under the Agreement or any of the Obligations;

(vii) any Insolvency Event occurs with respect to the Company or LGS; or

(viii) any other act or omission to act or delay of any kind of the Company which might, but for the provisions of this paragraph, constitute a legal or equitable discharge of the Guarantor's obligations hereunder.

4. Changes in Obligations, Collateral therefor and Agreements Relating thereto; Waiver of Certain Notices. The Guarantor agrees that LGS may at any time and from time to time, either before or after the maturity thereof, without notice to or further consent of the Guarantor, extend the time of payment of, exchange or surrender any collateral for, or renew any of the Obligations, and may also make any agreement with Company or with any other party to or person liable on any of the Obligations or interested therein, for the extension, renewal, payment, compromise, discharge or release thereof, in whole or in part, or for any modification of the terms thereof or of any agreement between LGS and Company or any such other party or person, without in any way impairing or affecting this Guaranty. The Guarantor waives notice of the acceptance of this Guaranty and of the Obligations, presentment, demand for payment, notice of dishonor and protest.

5. Expenses. The Guarantor agrees to pay on demand all fees and out-of-pocket expenses (including the reasonable fees and expenses of LGS's counsel) in any way relating to the enforcement or protection of the rights of LGS hereunder; provided, that the Guarantor shall not be liable for any expenses of LGS if no payment under this Guaranty is due.

6. Stay of Acceleration Ineffective with Respect to Guarantor. In the event that acceleration of the time for payment of any amount payable by the Company under the Agreement is stayed upon the insolvency, bankruptcy or reorganization of the Company, all such amounts otherwise subject to acceleration or required to be paid upon an early termination pursuant to the terms of the Agreement shall nonetheless be payable by the Guarantor hereunder forthwith on demand by LGS.

7. Subrogation. Upon payment of any of the Obligations, the Guarantor shall be subrogated to the rights of LGS against Company with respect to such Obligations; provided that the Guarantor shall not enforce any right or receive any payment by way of subrogation until all of the Obligations then due shall have been paid in full and LGS agrees to take at the Guarantor's expense such steps as the Guarantor may reasonably request to implement such subrogation.

8. No Waiver; Cumulative Rights. No failure on the part of LGS to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof,

nor shall any single or partial exercise by LGS of any right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power. Each and every right, remedy and power hereby granted to LGS or allowed it by law or other agreement shall be cumulative and not exclusive of any other, and may be exercised by LGS at any time or from time to time.

9. **Assignment; Successors and Assigns.** This Guaranty shall be binding upon and inure to the benefit of the Guarantor and its successors and assigns and LGS and its successors and assigns. Guarantor may not assign its rights and obligations hereunder without the prior written consent of LGS, and any such purported assignment without such written consent will be void. Without the necessity of obtaining Guarantor's consent, LGS may pledge its rights hereunder for security of any indebtedness. Simultaneous with the execution of this Guaranty, Guarantor agrees to execute and deliver a Consent and Agreement in the form attached hereto as Attachment A. At the request of LGS during the term of this Guaranty in connection with a refinancing of the indebtedness of LGS or otherwise, Guarantor agrees to execute and deliver a new Consent and Agreement in the form attached hereto as Attachment A.

10. **Amendments and Waivers.** No provision of this Guaranty may be amended, supplemented or modified, nor any of the terms and conditions hereof waived, except by a written instrument executed by the Guarantor and LGS.

11. **Remedies Cumulative.** The rights, powers, remedies and privileges provided in this Guaranty are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law and any other agreement.

12. **Representations and Warranties.**

(a) The Guarantor is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has full corporate power to execute, deliver and perform this Guaranty.

(b) The execution, delivery and performance of this Guaranty by the Guarantor have been duly authorized by all necessary corporate action and no further approvals are required.

(c) All consents, authorizations and approvals of, and registrations and declarations with, any governmental authority necessary for the due execution, delivery and performance of this Guaranty have been obtained and remain in full force and effect and all conditions thereof have been duly complied with, and no other action by and no notice to or filing with, any governmental authority is required in connection with the execution, delivery or performance of this Guaranty.

(d) This Guaranty constitutes the legal, valid and binding obligation of the Guarantor enforceable against the Guarantor in accordance with its terms, subject, as to enforcement, to bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting creditors' rights and to general equity principles.

13. **Notices.** All notices or demands on the Guarantor shall be deemed effective when received, shall be in writing and shall be delivered by hand or by registered mail, or by facsimile transmission promptly confirmed by registered mail, addressed to Guarantor at:

City of Lodi
1331 S. Ham Lane
Lodi, CA 95242
Telephone: 209-333-6762
Attention: Alan N. Vallow
Fax: 209-333-6839

or to such other address or fax number as the Guarantor shall have notified LGS in a written notice delivered to LGS at the address or facsimile number specified in the Agreement.

14. **Continuing Guaranty.** This Guaranty shall become and remain in full force and effect and shall be binding on the Guarantor, its successors and assigns until all of the Obligations have been satisfied in full.

15. **Governing Law.** THIS GUARANTY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS.

16. **Jurisdiction.** THE PARTIES IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE STATE OF NEW YORK AND THE UNITED STATES DISTRICT COURT LOCATED IN THE SOUTHERN DISTRICT OF NEW YORK IN NEW YORK, NEW YORK FOR PURPOSES OF ANY SUIT, ACTION OR PROCEEDINGS RELATING TO THIS GUARANTY.

IN WITNESS WHEREOF, this Guaranty has been duly executed and delivered by the Guarantor to LGS as of the date first above written.

CITY OF LODI

By: _____
Name: H. Dixon Flynn
Title: City Manager

APPROVED AS TO FORM:

Randall A. Hays, City Attorney

ATTEST:

Susan Blackston, City Clerk

Attachment A
Consent and Agreement

RESOLUTION NO. 2002-181

A RESOLUTION OF THE LODI CITY COUNCIL
AUTHORIZING THE CITY MANAGER TO EXECUTE
AN AGREEMENT WITH LODI GAS STORAGE, LLC
THAT WILL PROVIDE NATURAL GAS STORAGE
FOR THE CITY OF LODI

=====

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Lodi does hereby authorize the City Manager to execute an agreement with Lodi Gas Storage, LLC that will provide for natural gas storage for the City of Lodi.

Dated: August 21, 2002

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I hereby certify that Resolution No. 2002-181 was passed and adopted by the City Council of the City of Lodi in a regular meeting held August 21, 2002, by the following vote:

AYES: COUNCIL MEMBERS – Hitchcock, Howard, Land, Nakanishi, and
Mayor Pennino

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None



SUSAN J. BLACKSTON
City Clerk